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BREXIT, THE US PRESIDENTIAL ELECTION AND NEONATIONALISM: IS THE GLOBAL IMAGINARY FALTERING?

(This is an unedited version of the essay which will appear in *Transnational Legal Theory* 1917)

Dora Kostakopoulou

Intimations of Global Law is a wonderful book; it brings out the complexity arising from the layering and the interweaving of various normative orders and invites us to take global law seriously. This is because ‘global law reflects the progressive normalisation of a general movement of “acting up” in the culture of globalisation, as well as the intensity and synergy of the fluidly interacting elites of global law-craft’ (Walker, 1995, p. 176). As a discussant of the book at the Queen Mary colloquium in November 2015, I faced difficulties in finding flaws in it particularly in the light of the fact that Professor Walker has anticipated a number of criticisms from so many different perspectives (national-statist, positivist, critical legal studies, postmodernist and so on) and has addressed them carefully and insightfully in the book. During that discussion, I merely posed questions for further exploration which, in turn, fed into the general discussion. One of those questions related to the possibility of a regression. Focusing on chapter five of the book and, in particular, on the section entitled ‘The inexorability of global law’ (section 5.3), I asked whether the intimations of global law could be reversed. In this short essay, I would like to confine myself to that question.

Neither the colloquium participants nor Professor Walker nor I could have anticipated the political events that took place in 2016 which call into question global law’s qualities and threaten to undo ‘the global law-craft’, such as Brexit, the election of President Trump in the US and the rise in neonationalism in Europe and elsewhere. In what follows, I seek to relate *Intimations of Global Law* to these developments with a view to eliciting Professor Walker’s thoughts on whether the global imaginary is faltering and on what needs to be done in the months ahead in order to prevent an irreversible damage to ‘the global law-craft’.

Certainly, if Brexit and President Trump's election were viewed to be irreducibly contingent events, my fears would be misplaced and the intimations of global law could continue to unfold in the future quite strongly. But are they just random events? In 1957 William Rikker published a short article in the *Journal of Philosophy* which was entitled 'Events and Situations'.¹ In it, he defined an event as 'any subjectively differentiated portion of motion or action' (Rikker, 1957, p. 58). Rikker observed that when individuals are faced with a continuous process of motion and action in time, they may decide to slice it and to isolate a portion of reality, namely, 'the event' (Rikker, 1957, p. 60). But situations are different.

Situations are 'the boundaries, the stops and starts, that humans impose on continuous reality' (Rikker, 1957, p. 60). They are arrangements 'in a specified, instantaneous and spatially extended location' (Rikker, 1957, p. 61). We might be inclined to disregard an event or to underestimate its impact. We might also wish to dismiss it as a purely accidental happening. But it is impossible to do the above with respect to situations. Situations are not isolated events; they are, instead, states of affairs. They can profoundly unsettle and alter realities and, therefore, necessitate a response.

Readers will undoubtedly wonder, here, about the possible affinities among Rikker's distinction of 'events and situations', political developments, such as the Brexit outcome of the EU Referendum on 23 June 2016 and the US presidential election, and global law. After all, we could ignore Rikker's observations and view the above mentioned political developments as mere events, accidental happenings taking place closely in time but at a distance. There are no causal connections among them apart from the fact that they manifest the unpredictability of public opinion. But such a view would underscore another fact, namely, that their coincidence is meaningful and generative of a situation. A situation emerges as a result of the meaningful coincidence of random events.²

Far from witnessing discrete and differentiated events, we are thus faced with a situation which is unfolding across the world and which calls into question the inevitable presence of global law (Walker, 2015). This situation involves the successful capture of 'the nation issue' by populist and conservative elites in Britain, France, Poland, Hungary, Russia, the USA and elsewhere.

¹ William Rikker, 'Events and Situations', *The Journal of Philosophy*, Vol. 54 (3) (1957): 57-70, pp. 61-2.

² Carl Jung and Wolfgang Poli have called this 'synchronicity: an acausal connecting principle'; *The Interpretation of Nature and the Psyche* (New York: Ishi Press, [1950] 2012).

Capitalising on peoples' insecurities and shrinking income over the last eight years, conservative elites make diagnoses and promise solutions, however improbable and impossible these might be. They promise to deliver 'the UK's independence' from the EU, to 'make the USA great again', to deal effectively with 'foreigners causing austerity', to keep 'dissenters and traitors at bay' and to safeguard precious national values which are allegedly under attack by unpatriotic citizens and groups. Nationalist fervour and resentment are fuelled without any shame or apology by demagogic campaigns in Europe, the US and elsewhere. And in promising to 'take back control', to 'wall the country', to deport millions of residents, be they undocumented migrants in the US or EU citizens permanently residing in the UK, they keep dividing societies and countries and spreading resentment and hate for the Other. By so doing, they create moral liabilities and political hazards.

All this marks a new era characterised by an insular political philosophy and the revival of ethno-nationalism. The narratives of the political elites that govern should not be underestimated. They have incredible effects on vulnerable human beings who have been battered by austerity and the economic downturn of the last eight years. They can redefine identities and the societal space in which we all live and act. The 'Leave the EU' campaigners essentially said to the British public: 'choose who you are' and 'in what kind of country you want to live'. Mr Trump said something similar to the American people. In both countries, conservative elites promised to empower blue collar workers and their communities by unshackling polities from regional and global partnerships, multilateralism and cosmopolitanism. In short, they wish to distance themselves from all those political conditions and arrangements that offer wider perspectives and cultivate the ethos of internationalism which tames tribal loyalties and frees the human spirit. They seek to define communities by borders and the internal socio-political space by its edges. But this redefinition dehumanises human beings and solidifies in- and out-group classifications.

Accordingly, I cannot but wonder about the future of global law. It is true, as Professor Walker (1995, pp. 148-150) writes, that global law is a forward-looking project and has an aspirational quality. It is also true that it is accompanied by 'partial visions'; 'these do not represent and articulate competing visions of the global good life' (Walker, 2015, p. 135). Nevertheless, these partial visions need to be defended in our era for they capture 'law's broader heritage' (Walker, 2015,

p. 152). Governing in, and through, freedom and democracy requires a combinational thinking and relations at all levels and with all actors. Above all, it requires the transformation of opposing interests into a common plan of action that protects constitutional principles and human rights and fosters mutual cooperation.

It is true that self-governing societies do not merely accommodate events; they need respond to situations in responsible and rational ways. They need to display determination and inventiveness in enhancing democratic practices and refusing to dismantle democratic legal orderings which regulate the lives of millions of human beings. In this respect, although one is more often than not tempted to conclude that an event, be it political or otherwise, has one determinate ending, political situations, consisting of ‘acausal combinations of events’³, require foresight and close attention to events’ multiple and diffuse implications as well as to their cross-connections. What is suggested here is not a process of manipulation of the temporal process. I argue that events should not be conflated with situations and that the unravelling of situations leaves room for political interventions with a view to shaping them in ways that enhance the rule of law and the democratic way of life. Herein lies the responsibility of ‘globalists’ and the academy. But what needs to be done in order to prevent the global imaginary from faltering and to contest the narratives of cunning state elites which insist on the primacy of ‘just national’?

I look forward to Professor Walker’s thoughts on these questions. I also believe that Rikker’s distinction between events and situations is quite insightful and could furnish grounds for optimism. Random events or sequences of events can only surprise, disorientate and destabilise. But situations reveal a discernible pattern which can be adjusted. In them, the past is not encased in theoretical or historical capsules. It is made visible and brought to view in order to enable us to think carefully about the future. By going backwards and forward, by picturing the past (the national) in the future (in the postnational or global) and by defending the intimations of global law which Professor Walker has discussed so wonderfully in his book, there is always the possibility of drawing a different path and superimposing it on that created by the events that took place in 2016 or of changing direction altogether. For unlike events, situations can change into other situations. Accordingly, ‘the seafarers

³ This phrase is borrowed from Jung and Poli, n. 2 above, at p. 11.

of global law have an even more difficult task to perform, a multitask indeed. They not only have to rebuild the ship as it sails, but they have to do so in a shifting sea whose nautical charts are subject to continuous adjustment' (Walker, 2015, p. 162).